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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
PRICE CAP PERFORMANCE REVIEW)
FOR LOCAL EXCHANGE CARRIERS;)
TREATMENT OF VIDEO DIALTONE)
SERVICES UNDER PRICE CAP)
REGULATION)

CC Docket No. 94-1

AT&T COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits these comments on the Commission's Further Notice of Proposed Rulemaking ("FNPRM"), FCC 95-49, released on February 15, 1995. The FNPRM seeks comment on, among other things: (1) whether a new price cap service basket should be established for video dialtone service; (2) whether the Commission should apply the rules for "new services" to establish the initial rates to be included in a video dialtone basket; (3) whether separate service categories should be established for a video dialtone service basket; and (4) whether the costs and revenues associated with a video dialtone basket should be included with the costs and revenues from other service baskets to compute a LEC's interstate earnings for purposes of the sharing. These comments address each of these points.

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BACKGROUND

In its Video Dialtone Order and its Video Dialtone Reconsideration Order, the Commission permitted local exchange carriers ("LECs") to offer video dialtone service.¹ The Commission, after considering concerns raised by several parties that the existing safeguards against cross-subsidization needed to be strengthened, adopted this FNPRM in order to seek comment on its proposed revisions to its price cap rules. The proposed rules are designed to prevent the LECs from cross-subsidizing their video dialtone offers through increases in rates in the LEC's other regulated interstate service offerings.

¹ Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Further Notice of Proposed Rulemaking, First Report and Order and Second Further Notice of Inquiry, 7 FCC Rcd 300 (1991), recon., 7 FCC Rcd 5069 (1992), aff'd sub nom. National Cable Television Association v. FCC, 33 F.3rd 66 (D.C. Cir. 1994); Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992) ("Video Dialtone Order"), appeal pending sub nom., Mankato Citizens Telephone Company, No. 92-1404 (D.C. Cir. filed Sept. 9, 1992) and modified on recon., Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd. 244 (1994) ("Video Dialtone Reconsideration Order").

- I. THE COMMISSION SHOULD ESTABLISH A SEPARATE SERVICE BASKET FOR VIDEO DIALTONE SERVICE AND SHOULD APPLY ITS EXISTING RULES FOR NEW SERVICES TO ESTABLISH THE INITIAL RATES TO BE INCLUDED IN THE VIDEO DIALTONE BASKET.
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AT&T strongly supports the Commission's conclusion that a separate price cap basket should be established for video dialtone service.² As the Commission has stated previously, a separate price cap basket should be established for services that have unique characteristics and, therefore, do not fit into existing baskets³.

While the Commission generally discourages the creation of new price cap service baskets, it permits the creation of such baskets when the potential for cross-subsidization, and the corresponding harm to ratepayers, cannot be reduced by the use of service categories, bands and subindexes.⁴ The potential for such cross subsidies exists when very different services, with different sets of customers and competitors, are placed in the same basket. This potential exists in the case of video

² FNPRM, ¶ 8. See also, Video Dialtone Reconsideration Order.

³ Video Dialtone Reconsideration Order, p. 347.

⁴ Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, 6812 (1990) ("Second Report and Order"), recon., 6 FCC Rcd 2637 (1991), aff'd., National Rural Telecom Assoc. v. FCC, 988 F.2d 174 (1993).

dialtone service and the Commission has determined that such situations should be avoided. (Id.)

The use of a separate basket for video dialtone will help prevent the improper cross subsidization that could occur if LECs were permitted to offer artificially low video dialtone rates funded by increasing rates for voice services.⁵ Establishing a separate basket would help ensure that the costs related to video dialtone services are borne only by customers who choose to use those facilities.

Moreover, video dialtone is a substantially different service from other price cap basket services and, therefore, should be placed in a separate price cap basket. This service is fundamentally different than the basic telephony services -- common line, traffic sensitive, special access, and interexchange -- included in the current price cap baskets. Consequently, video dialtone should not be included in any of those price cap baskets.

AT&T also supports the Commission's tentative conclusion (FNPRM, ¶ 18) that video dialtone is a "new service" under the Commission's price cap rules. New

⁵ The Commission should also establish service categories within the video dialtone service basket. Requiring different service categories is necessary as an added safeguard to ensure that ratepayers are protected against LEC cross-subsidization.

services are services that "add to the range of options already available to customers."⁶ As the Commission has previously noted, video dialtone increases the range of options available to customers, because it offers service beyond existing channel service or other video transport services.⁷ In fact, video dialtone provides video programmers access to a basic common carrier platform where no access existed previously.

II. THE LEC'S INTERSTATE EARNINGS FOR PURPOSES OF IMPLEMENTING SHARING AND LOW-END ADJUSTMENT MECHANISMS SHOULD NOT INCLUDE COSTS AND REVENUES ASSOCIATED WITH THE VIDEO DIALTONE BASKET.

The Commission sought comment (FNPRM, ¶ 24) on whether the costs and revenues associated with a video dialtone basket should be included with those from other baskets to compute a LEC's interstate earnings. The Commission uses the LEC's interstate earnings as the basis for calculating the carrier's sharing obligation. The sharing and lower-end adjustment mechanisms are designed to adjust a LEC's price cap index if its rate of return falls outside a specified range (currently 10.25 percent to 13.25 percent).⁸ The adjustments

⁶ Second Report and Order, pp. 6824-25.

⁷ Video Dialtone Reconsideration Order, p. 340.

⁸ The rate of return is dependent on the productivity factor selected by the LEC. The FCC has recently announced an interim plan to adjust the productivity factors to 4.0, 4.7, and 5.3 percent. Consequently, the rate of return range will be 10.25 percent to

compensate for the possibility of error in the choice of the productivity factor used by the LECs.

The LEC's sharing obligation usually is based on the LEC's total interstate earnings.⁹ However, using a LEC's total interstate earnings -- including costs and revenues from a video dialtone service basket -- would enable the LECs to recover video dialtone costs through charges to other interstate access services.

As the Commission correctly noted in the FNPRM (§ 25), including costs and revenues associated with video dialtone in calculating the LEC's interstate rate of return may lower the LEC's overall earnings. Video dialtone is a new service that will require significant investments, with correspondingly little revenue initially, resulting in a rate of return that is lower than the return on other services. Consequently, the LEC's sharing obligation will be reduced if video dialtone costs and revenues are included.

To correct this problem, the costs and revenues associated with the video dialtone service should not be included in the calculation of the LEC's interstate rate

(footnote continued from previous page)

16.25 percent. See Commission Affirms Commitment to Competition and Fair Long Distance Rates in LEC Price Cap Plan, CC Docket 94-1, FCC News, dated March 30, 1995.

⁹ Second Report and Order, p. 6805.

of return nor should the video dialtone price cap index be adjusted for sharing. Until such time as the video dialtone rate of return equals the interstate rate of return, excluding the video dialtone rate of return, the video dialtone basket should not be part of the sharing process.

CONCLUSION

For the reasons stated above, AT&T supports the Commission's proposal to establish a new service basket, including the necessary related service categories, for video dialtone service. Establishing a new service basket will assist in preventing the LECs from subsidizing its video dialtone service through its regulated services.

Respectfully submitted,

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